

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ANGELITO C. MERCADO,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:17-cv-00918-TWP-MPB
)	
COLUMBUS POLICE DEPARTMENT,)	
JAMES LEINHOOP MAYOR,)	
)	
Defendants.)	

**Entry Discussing Filing Fee, Dismissing Complaint, Denying Motion for Discovery,
and Directing Plaintiff to Show Cause**

I. In Forma Pauperis

The plaintiff shall have **through April 24, 2017**, in which to either pay the \$400.00 filing fee for this action or demonstrate that he lacks the financial ability to do so. If he seeks leave to proceed *in forma pauperis*, his request must be accompanied by a copy of the transactions associated with his institution trust account for the 6-month period preceding the filing of this action on March 24, 2017.

II. Screening of Complaint

The complaint is subject to the screening requirement of 28 U.S.C. § 1915A(b). This statute directs that the court dismiss a complaint or any claim within a complaint which “(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” *Id.*

The plaintiff, Angelito Mercado (“Mr. Mercado”), filed this civil rights action pursuant to 42 U.S.C. § 1983. He is incarcerated at the Bartholomew County Jail. He names the following

defendants: 1) Columbus Police Department; and 2) Mayor James Leinhoop. He seeks \$100,000.00 in damages.

Mr. Mercado alleges that on November 1, 2016, the Columbus Police Department took a blood draw from him at the Columbus Regional Hospital without his consent or a warrant. He alleges this caused emotional distress and loss of liberty.

Mr. Mercado's allegations *could* state a viable claim under the Fourth Amendment to the United States Constitution because blood draws ordered by police qualify as "searches" under the Fourth Amendment. *See Missouri v. McNeely*, 133 S.Ct. 1552, 1558 (2013). The problem with Mr. Mercado's complaint, however, is that he has not named a proper defendant. He has not identified who participated in any unlawful search.

The Columbus Police Department is not a suable entity. *Sow v. Fortville Police Dept.*, 636 F.3d 293, 300 (7th Cir. 2011) ("[T]he Indiana statutory scheme does not grant municipal police departments the capacity to sue or be sued."). Therefore, any claim against the Columbus Police Department is **dismissed for failure to state a claim upon which relief can be granted.**

In addition, there are no allegations of wrongdoing made against the Mayor, nor does it appear that the Mayor had any involvement in drawing Mr. Mercado's blood. Any claim against Mayor Leinhoop is **dismissed for failure to state a claim upon which relief can be granted.**

"[A] plaintiff can plead himself out of court by alleging facts that show there is no viable claim." *Pugh v. Tribune Co.*, 521 F.3d 686, 699 (7th Cir. 2008). For the above reason, the complaint fails to state a claim upon which relief can be granted as a matter of law and is therefore **dismissed pursuant to 28 U.S.C. § 1915A.**

III. Show Cause and Motion for Discovery

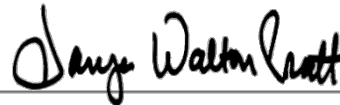
The plaintiff shall have **through April 24, 2017**, in which to **show cause** why this action should not be dismissed for failure to state a claim upon which relief can be granted. *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022 (7th Cir. 2013) (plaintiffs should be given at least an opportunity to amend or to respond to an order to show cause before a case is “tossed out of court without giving the applicant any timely notice or opportunity to be heard to clarify, contest, or simply request leave to amend.”).

If the plaintiff fails to show cause or seek leave to amend, the action will be dismissed for the reasons set forth in this Entry without further notice.

The plaintiff’s motion for discovery [dkt. 3] is **denied as premature and overly broad**. If plaintiff seeks discovery of a narrow issue, plaintiff may renew this motion.

IT IS SO ORDERED.

Date: 3/28/2017



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

ANGELITO C. MERCADO
Bartholomew County Jail
543 2nd Street
Columbus, IN 47201